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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MICHAEL WAYNE GAITHER,)
)
Defendant.)
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No. CR-07-00457-RMW

**GOVERNMENT'S RESPONSE TO
PRESENTENCE REPORT**

Sentencing Date: January 14, 2008
Sentencing Time: 10:00 a.m.

Place: Courtroom of Honorable Ronald M.
Whye

On or about July 18, 2007, the federal Grand Jury returned a one-count indictment, charging defendant Michael Wayne Gaither ("defendant") with being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1). On or about October 1, 2007, defendant pled guilty to the one-count indictment pursuant to a plea agreement. In that plea agreement, the government reserved the right to argue that defendant's base offense level for the instant offense was 14, pursuant to U.S.S.G. § 2K2.1(a)(6). Defendant reserved the right to argue that his base offense level was 6, pursuant to U.S.S.G. § 2K2.1(b)(2).

On or about December 21, 2007, the Probation Office disclosed the Pre-Sentence Report

1 (“PSR”) in this matter. The Probation Office calculated that defendant’s base offense level is 14,
2 pursuant to U.S.S.G. § 2K2.1(a)(6) (PSR ¶ 22). The Probation Office further determined that
3 defendant has ten criminal history points and is in Criminal History Category V. (PSR ¶ 45).
4 Assuming a 2-level reduction pursuant to U.S.S.G. § 3E1.1 for acceptance of responsibility, the
5 Probation Office calculated that defendant’s adjusted offense level is 12 and his applicable
6 sentencing guideline range would be 27-33 months. (PSR ¶¶ 30, 90). The government has no
7 objection to the PSR’s sentencing guideline calculation.

8 On December 21, 2007, the Probation Office also filed its final sentencing
9 recommendation, which stated that a “sentence of 32 months in the Bureau of Prisons (BOP),
10 followed by three years of supervised release, is warranted to provide just punishment for the
11 offense and to afford adequate deterrence to further criminal conduct.” Probation Office
12 Sentencing Recommendation, p. 2.

13 The government has no objections to the factual findings of the PSR or the Probation
14 Office’s sentencing guideline calculations. The government also has no objections to the
15 Probation Office’s final sentencing recommendation of 32 months. Therefore, the government
16 respectfully requests that this Court sentence defendant to term of 32-months imprisonment.

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18 Dated: December 26, 2007

SCOTT N. SCHOOLS
United States Attorney

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20 /s/ Hanley Chew
21 HANLEY CHEW
Assistant United States Attorney
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